

it's the law!

a review of the laws that provide americans with access for all

By Barbara Raimondo



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Esq., is a long-time advocate for the rights of deaf and hard of hearing individuals and their families. She and her husband are the parents of two deaf young adults, and this year are host parents of a deaf student from Ghana. She welcomes questions and comments about this article at baraimondo@me.com.

Marta, 19, a freshman in her state's best public university, is excited and concerned. She has achieved her dream of getting into her first-choice college, but is the school required to provide Communication Access Realtime Translation (CART) in the lecture hall and the classroom?

Mendez, 18, wants to work part time in a large store near his home. When the manager sees his hearing aids, he says, "You have to be able to hear to do this job." Does Mendez have a right to accommodations?

Sam, 9, loves soccer and wants to join his city's soccer team. The coach and the boys on the team are hearing; Sam is deaf and uses American Sign Language. Is the city required to provide an interpreter?

The United States is more accessible to deaf and hard of hearing individuals and people with disabilities today than it was 50, 20, or even 10 years ago. A variety of laws ensures equality in the treatment of deaf and hard of hearing people. Communication barriers have been addressed, and wider opportunities are available in education, employment, and community. Here is a look at this legislation.

NEWBORNS

Early Hearing Detection and Intervention (EHDI)

All states are required to screen babies at birth to determine if they are hearing or suspected of being hard of hearing or deaf. The screening indicates whether it is necessary to provide additional audiological assessment to determine the baby's hearing levels. States have established systems of follow-up audiological assessment and links with early intervention programs. Approximately two to three of every 1,000 newborns are hard of hearing or deaf.

Photos by John T. Consoli

Right and below: Under the IDEA, children receive services as mandated by their IFSPs or IEPs.



In most cases, these babies are eligible for early intervention services until they are 3 years old.

For more information:

- National Center for Hearing Assessment and Management, www.infanthearing.org
- Boys Town National Research Hospital, www.babyhearing.org

BABIES AND TODDLERS **Individuals with Disabilities Education Act (IDEA), Part C** **Early Intervention**

Early intervention systems are required to evaluate eligible children's physical, cognitive, communication, social-emotional, and adaptive development. Then goals are developed and services provided to meet the needs of each child and his or her family. This information is documented in an Individualized Family Service Plan (IFSP) developed by an IFSP team that includes parents and professionals.

For more information:

- U.S. Department of Education, <http://idea.ed.gov/part-c/search/new>
- The Children's Hospital of Philadelphia, www.raisingdeafkids.org

CHILDREN **IDEA, Part B** **Preschool Through Age 21**

Many—but not all—children who receive early intervention services under Part C of the IDEA will continue to be served by Part B of the IDEA, which serves children ages 3 through 21 years or graduation from high school. However, there is a separate eligibility process. To receive services after the age of 3, deaf and hard of hearing children must be able to show that their “hearing impairment...adversely affects [their] educational performance” and because of that, they need special education and related services (20 U.S.C. § 602(3)(a)). Like Part C, Part B requires that the child be evaluated and his or her needs, goals, and services identified. This information is documented in an Individualized Education Program (IEP) developed by an IEP team that includes parents and professionals. Among other things, Part B requires the IEP team to ensure that:

- The child's language and communication needs are addressed.
- The child is placed in the “least restrictive environment,” that is, an educational setting that meets the child's language, communication, and academic needs. The least restrictive environment may be a regular education class, a special education class, a special school, or another environment.

- The child has access to the regular education curriculum, with support where needed.
- The child takes the same state and local assessments as all other children.
- The child has access to extracurricular and nonacademic activities.
- The child's special education and related services are based on peer-reviewed research to the extent practicable.
- The child's goals and services for transition into postsecondary education or the workplace are included once the child is 16 years old.

Procedural safeguards are in place to protect students' rights. Due process complaints or state complaints may be filed. Each state is responsible for providing information to parents on their rights and how to file complaints.

PRIVATE EDUCATION

When a parent places a child in private school, the child is not eligible for all the IDEA services he or she would be eligible for if he or she attended public school. In a private school the child becomes eligible for a "services plan," which generally is not as individualized or as strong as an IEP. The private school, however, is also covered by the Americans with Disabilities Act (ADA), Title II.

For more information:

- U.S. Department of Education, <http://idea.ed.gov>
- National Dissemination Center for Children with Disabilities, www.nichcy.org

ON THE JOB

ADA

Title I, Employment

This section addresses discrimination and accommodation in applying for a job and in the workplace. It applies to employers with 15 or more employees and deaf and hard of hearing individuals who are able to perform the "essential functions" of a job, with or without "reasonable accommodation" (42 U.S.C. § 12111). Reasonable accommodation may occur during the job application process, in the work environment, or in ancillary areas of the workplace; reasonable accommodation enables the individual with disabilities to enjoy work benefits and privileges on a level equal to those enjoyed by nondisabled employees. These accommodations may include job restructuring, access to telephone relay services or captioned telephones, and the provision of interpreters.



"Mitigating measures," such as the use of assistive technology, do not convert a person with disabilities into a nondisabled person in the eyes of the law. For example, a deaf person who hears well with a hearing aid or a cochlear implant is still considered deaf—and remains entitled to Title I protections.

There is a limit to the scope of the ADA;

for example, an employer is not required to provide accommodations that will impose an "undue hardship," i.e., a significant difficulty or expense (42 U.S.C. § 12111). If a deaf or hard of hearing individual believes an employer or a potential employer has violated the ADA Title I, he or she may file a complaint with the Equal Employment Opportunity Commission.

For more information:

- The Equal Employment Opportunity Commission, www.eeoc.gov/youthb//disability.html
- United States Department of Labor, www.dol.gov/odep/pubs/fact/ada.htm

COMMUNITY EVENTS

ADA

Title II, State and Local Governments

The ADA requires state and local governments to make their programs, activities, and services accessible to individuals with disabilities. State and local governments must ensure their services—including schools, after-school programs, summer camps, sports teams, and community events—are as accessible to deaf and hard of hearing individuals as they are to non-deaf individuals. They must provide "auxiliary aids and services" to make this happen, including:

- Qualified interpreters on site or through video remote interpreting
- Real-time computer-aided transcription services
- Written materials
- Exchange of written notes
- Telephone handset amplifiers
- Assistive listening devices
- Assistive listening systems
- Telephones compatible with hearing aids
- Closed caption decoders
- Open and closed captioning, including real-time captioning
- Voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective

telecommunications devices

- Videotext displays
- Accessible electronic and information technology
- Other methods to make aurally delivered information available to individuals who are deaf or hard of hearing

In addition, public entities cannot refuse calls that arrive through the Telecommunications Relay Service (TRS).

However, there are limits. The ADA does not require a public entity to take any action that would result in a fundamental alteration in the nature of a service, program, or activity, or undue financial and/or administrative burdens. The burden is on the public organization to prove that providing access would result in an undue burden. Further, the entity is still under obligation to provide access in a manner that would not constitute a fundamental alteration or financial burden.

If an individual believes a public entity is violating the state and local government provisions of the ADA, he or she may file a complaint with the U.S. Department of Justice or a lawsuit in a local court.

For more information:

- U.S. Department of Justice, www.ada.gov
- ADA National Network, <http://adacourse.org/solutions.php?idarea=Government>

IN THE MARKETPLACE ADA

Title III, Public Accommodations

While Title II covers state and local governments, Title III covers private entities that have goods, services, or areas that everyone (the public!) uses. Title III also requires these organizations to provide auxiliary aids and services to ensure effective communication, except when a fundamental alteration or undue burden would result. These private entities are required to accommodate the public:

- Hotels, motels, and places of lodging
- Restaurants, bars, and places serving food and/or drinks
- Movie theaters, concert halls, stadiums, museums, and places of entertainment
- Auditoriums, convention centers, halls, and places of public gathering
- Bakeries, groceries, clothing stores, hardware stores, shopping centers, and sales and rental locations
- Laundromats, dry cleaners, banks, barber shops, beauty shops, travel services, shoe repair services, funeral parlors, gas stations, offices of accountants or lawyers, pharmacies, insurance offices, professional offices of healthcare providers, hospitals, or other service establishments

- Terminals, depots, or other stations used for public transportation
- Museums, libraries, galleries, or other places of public exhibitions
- Parks, zoos, amusement parks, or other places of recreation
- Private schools, including nurseries, elementary, secondary, undergraduate, and postgraduate, and other places of education
- Day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies, and other social service center establishments
- Gymnasiums, health spas, bowling alleys, golf courses, or other places of sporting events or exercise

If an individual believes that an organization open to the public has discriminated against him or her, he or she may file a complaint with the U.S. Department of Justice or file a lawsuit.

For more information:

- U.S. Department of Justice, www.ada.gov
- ADA National Network, <http://adata.org/tags/title-iii>

ASSISTANCE WITH PHONE CALLS ADA

Title IV, Telecommunications

This section of the ADA establishes the TRS, which use communication assistants to facilitate communication between hearing and deaf callers. For example, a deaf caller using a videophone may call a hearing individual using a voice phone, with a sign language interpreter serving as an intermediary. The Federal Communications Commission (FCC) sets out rules that TRS companies must follow.

For more information:

- FCC, <http://transition.fcc.gov/cgb/dro/trs.html>

TELEVISION CAPTIONING

All television receivers with screens 13 inches or larger are required to include closed captioning capability. The FCC rules require that nearly all video programming display captions, with only a few types of exemptions. Consumers may file a complaint with the FCC when video programming does not show captions.

For more information:

- FCC, www.fcc.gov/guides/closed-captioning
- National Association of the Deaf, www.nad.org/issues/television-and-closed-captioning/improving-closed-captioning

ACCESSIBILITY AND THE INTERNET

The 21st Century Communications and Video Accessibility Act (CVAA) Update for the Internet

The CVAA, passed in 2010, updated the telecommunications law to ensure accessibility in the range of telecommunications products and services available today. For example, when laws requiring television captioning were passed, the Internet was not yet in people's homes. The CVAA extends closed captioning to Internet-based video programming, requires telephones used with the Internet to be hearing aid compatible, and requires user controls for TVs and other video programming devices to have a button, key, or icon designated for easily activating closed captioning. The FCC has been writing rules to implement this new law. Complaints for violations of the CVAA can be filed with the FCC.

For more information:

- FCC, <http://transition.fcc.gov/cgb/drol/>
- Coalition of Organizations for Accessible Technology, www.coataccess.org

ADDITIONAL PROTECTION

Section 504 of the Rehabilitation Act Prohibiting Discrimination

Passed in 1973, the Rehabilitation Act (29 U.S.C. § 701 et seq.) was in some ways the first legislation protecting individuals with disabilities and served as a model for the ADA. Section 504 prohibits discrimination on the basis of disability in any program or activity that receives federal financial assistance or is conducted by a federal agency. Public schools, colleges, and universities receive federal funds, as do most private colleges and universities. Each federal agency has developed rules as to how recipients of its funds must comply with the law.

For more information:

- U.S. Department of Education, www2.ed.gov/about/offices/list/ocr/504faq.html
- Wrightslaw, www.wrightslaw.com/advoc/articles/504_IDEA_Rosenfeld.html

A Look at Marta, Mendez, and Sam

Marta: The university is a function of state government, so Title II of the ADA applies. Further, because public universities receive federal funds, Section 504 of the Rehabilitation Act applies as well. Marta will have CART in her lecture hall and classrooms.

Mendez: Title I of the ADA applies. If Mendez is otherwise qualified to perform the essential functions of the job, the store he seeks to work in has more than 15 employees, and providing reasonable accommodation will not impose an undue hardship, he has a right to accommodation.

Sam: Since the soccer team is under the auspices of local government, Title II of the ADA applies. The team must provide an interpreter unless doing so would constitute a fundamental alteration in the nature of the activity or would result in undue financial and administrative burdens.



References

- 21st Century Communications and Video Accessibility Act. (2010). Pub. L. No. 111-260.
- Americans with Disabilities Act of 1990. (1991). Pub. L. No. 101-336, § 2, 104 Stat. 328.
- Early Detection, Diagnosis, and Treatment Regarding Hearing Loss in Newborns and Infants. (2012). Pub. L. 112-123, 42 U.S.C. § 280g-1 (20).
- Individuals with Disabilities Education Act. (1990). Pub. L. 101-476, 20 U.S.C. § 1401 et seq.
- Rehabilitation Act, Section 504. (1973). Pub. L. 93-412, 29 U.S.C. § 701 et seq.
- Telecommunications Act of 1996. (1996). Pub. L. 104-104 47 U.S.C. § 613 et seq.